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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 PAUL AARON MURRAY,

11 Defendant.

NO: 2:18-CR-0053-TOR

ORDER DENYING MOTION TO
DISMISS

12 BEFORE THE COURT is Defendant's *pro persona* Motion to Dismiss For
13 Prosecutorial Vindictiveness & Repeated Violations of the 5th Amendment
14 (Miranda, Grand Juries). ECF Nos. 295. The Government filed its opposition.
15 ECF No. 310. Defendant filed his reply. ECF No. 313, 314. This motion was
16 submitted for consideration without oral argument. The Court has reviewed the
17 file and the records contained therein and is fully informed.

18 DISCUSSION

19 Defendant has filed a convoluted, rambling, factually inaccurate motion to
20 dismiss. Defendant's briefing also contains repeated, inaccurate use of legal

1 terminology. The Court cautioned Defendant of this risk at the hearing where he
2 demanded to represent himself. The Court has fully reviewed the motion and
3 supporting materials and discerns Defendant's claims as follows.

4 First, Defendant contends the Government has "No Visual Depiction to
5 satiate" the Indictment. ECF No. 295 at 12-13. The Government contends
6 otherwise. The visual depictions are alleged to be child pornography, so they
7 cannot be turned over to the Defendant. Defendant and his experts can arrange to
8 see the evidence at a Government facility, but Defendant cannot be provided
9 copies nor possess such evidence. *See* Protective Orders at ECF Nos. 299, 308.
10 Defendant's motion to dismiss on this issue is denied.

11 Second, in an obtuse fashion, Defendant complains that "IT Issues Have
12 Plagued this Case". ECF No. 295 at 13-15. Defendant once again also complains
13 of a *Miranda* violation. However, the Court ordered suppression of the evidence
14 obtained in violation of *Miranda* (ECF No. 149) and eventually, dismissed Counts
15 2 and 4 of the Superseding Indictment (ECF No. 171). Nothing more is required.
16 Defendant repeatedly refers to the electronic devices as *Miranda* devices, which
17 makes no sense. The devices at issue are not *Miranda* devices. The Court
18 previously took testimony and specifically found that:

19 Defendant also contends that the password to his Samsung and
20 Dell laptops were obtained in violation of *Miranda*. The Court does
not find any evidence that the Dell laptop was accessed or opened by
the Government by means of a password. The Court finds that the

1 Government's forensic software does not use or require a password in
2 order to search for evidence on the laptop. Accordingly, even if a
3 password was illegally obtained for the Dell laptop, the Court finds
the evidence the Government later retrieved and seeks to introduce at
trial was independently obtained from any such taint.

4 The court finds that the Samsung laptop was accessed by means
of a password and the only logical conclusion the Court can draw is
5 that the password was obtained in violation of *Miranda*. COO Olson
began a forensic "preview" examination of that Samsung laptop on-
6 site. Before that examination was complete, he was informed that
obtaining passwords from the Defendant was in violation of *Miranda*.
7 Accordingly, he testified and the Court finds that he stopped his
"preview" and destroyed all evidence that he obtained at that point.
8 The Court thus Orders the suppression of all such preview evidence
and any fruits therefrom. However, the Government and the Defense's
9 expert agree that the subsequent laboratory examination and
duplication of the Samsung laptop digital evidence did not use or rely
10 upon the use of a password. Accordingly, evidence later obtained
independently of the password is still admissible and will not be
11 suppressed.

12 ECF No. 149 at 4-5. The Court stands by its findings and prior ruling.

13 Third, Defendant complains of "Prosecutorial Vindictiveness". ECF No.
14 295 at 15-17. Defendant contends the Government accessed his Apple iPhone and
15 obtained an Indictment for Destruction of Property to Prevent Search or Seizure
16 based on this access. *Id.* Once again, Count 4 of the Superseding Indictment was
17 dismissed and is no longer at issue in this case. ECF No. 171. Defendant
18 repeatedly alleges that the Government has exceeded its search authority in
19 execution of the warrant because the searches continued beyond 14 days. As the
20 Court has repeatedly explained, Federal Rule of Criminal Procedure 41(e)(2)(B)

1 specifically provides for the seizure of electronic devices within the time limits
2 specified by the search warrant (within 14 days) and allows for a detailed
3 examination thereafter, without limit. *See* ECF No. 149 at 3. This Court has
4 previously ruled on this issue and incorporates its prior rulings in denying
5 Defendant’s claim of prosecutorial vindictiveness. ECF Nos. 149, 159.

6 Fourth, Defendant recites “Prosecutorial Ethics & Responsibilities”. ECF
7 No. 295 at 17-19. With broad generalizations, Defendant seems to suggest
8 dismissal is appropriate. Defendant’s allegations do not warrant dismissal.
9 Outrageous government conduct is not a defense, but rather a claim that
10 government conduct in securing an indictment was so shocking to due process
11 values that the indictment must be dismissed. *United States v. Montoya*, 45 F.3d
12 1286, 1300 (9th Cir. 1995) (citations omitted). Under the “extremely high
13 standard” of this doctrine, an indictment should be dismissed “only when the
14 government’s conduct is so grossly shocking and so outrageous as to violate the
15 universal sense of justice.” *Id.* (citation omitted). The Court incorporates all its
16 prior rulings in this case and denies Defendant’s motion to dismiss.

17 Fifth, Defendant seeks an evidentiary hearing so he can question the
18 Government’s experts. ECF No. 295 at 19-21. The Court previously held
19 evidentiary hearings, including hearings on June 30 and July 1, 2020. Defendant
20 has shown no legal or factual basis for another evidentiary hearing. Defendant

1 attacks the strength of the Government's case, but that is a matter for trial, not a
2 pretrial hearing.

3 Finally, Defendant contends his "Double Jeopardy" rights have been
4 violated. "There are few if any rules of criminal procedure clearer than the rule
5 that 'jeopardy attaches when the jury is empaneled and sworn.'" *Martinez v.*
6 *Illinois*, 572 U.S. 833, 839 (2014) (quoting *Crist v. Bretz*, 437 U.S. 28, 35 (1978)).
7 Defendant's double jeopardy rights have never been violated.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

9 Defendant's *pro persona* Motion to Dismiss For Prosecutorial
10 Vindictiveness & Repeated Violations Of The 5th Amendment (Miranda, Grand
11 Juries), ECF Nos. 295, is **DENIED**.

12 The District Court Executive is directed to enter this order and provide
13 copies to the parties.

14 DATED February 7, 2022.



Thomas O. Rice
THOMAS O. RICE
United States District Judge